

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



RITA RUSHING

PLAINTIFF

V.

CIVIL ACTION NO. 3:17-cv-773 TSL-LRA

SUN LIFE FINANCIAL (U.S.) SERVICES
COMPANY, INC.

DEFENDANT

COMPLAINT

This is an action filed under the Employee Retirement Income Security Act (ERISA) by Plaintiff Rita Rushing for disability insurance benefits.

JURISDICTION

1.

Plaintiff invokes federal question jurisdiction pursuant to 28 U.S.C. § 1331, for a claim under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(1)(B), and under 28 U.S.C. § 1332 for diversity of citizenship on an amount in controversy exceeding \$75,000.00, exclusive of interest and costs. This Court has subject matter jurisdiction of this lawsuit as it arises under the “Employee Retirement Income Security Act,” 29 U.S.C.S. § 1001, *et seq.*

VENUE

2.

Venue lies in the Southern District of Mississippi, Northern Division, pursuant to 29 U.S.C. § 1132.

3.

Rita Rushing is an adult resident citizen of Noxubee County, Mississippi, whose residence address is 724 Eighth Street, Macon, Mississippi 39341.

4.

Sun Life Financial (U.S.) Services Company, Inc., of which Union Security Insurance Company is a subsidiary, is a corporation organized within the State of Delaware, with its principal office address as One Sun Life Executive Park, Wellesley Hills, MA 02481, and duly authorized to conduct business in Mississippi, which may be served with process by service upon its Registered Agent, Matt Tibodeaux, 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.

EXHAUSTION

5.

The Plaintiff properly made a claim for disability insurance benefits from the Defendant.

6.

The Plaintiff has exhausted the Defendant plan's administrative appeals procedure.

7.

The Defendant issued its denial of benefits to the Plaintiff by letter dated August 4, 2017.

8.

This Complaint is timely filed.

FACTS

9.

Rita Rushing is the owner and beneficiary of a Long Term Disability Policy issued by Defendant through her employer, Bancorp South, Inc., Group Policy Number 5404105/0/1/50.

10.

The policy provides for long term disability benefits. On or about December 31, 2012, Rita Rushing became totally disabled and was unable to perform her job. Pursuant to the terms of the aforementioned policy, Rita Rushing is entitled to both short term and long term benefits.

11.

Plaintiff has been determined disabled by the Social Security Administration as of said December 31, 2012 onset date.

12.

Notwithstanding substantial medical evidence supporting this claim, being Defendant's Claim Number H04200, Sun Life Financial (U.S.) Services Company, Inc., acting through its subsidiary, Union Security Insurance Company, has failed to abide by the contractual terms of the policy, has failed to provide the benefits called for under the policy, and has denied and continues to deny benefits provided for under the policy. As a direct result of the actions/inactions of the Defendant, Sun Life Financial (U.S.) Services Company, Inc., Plaintiff Rita Rushing has been denied the benefits to which she is entitled and has been required to hire counsel, and should be awarded the benefits provided under the insurance policy along with reasonable attorneys' fees for having to prosecute this claim.

13.

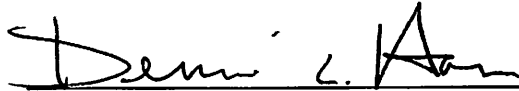
Contrary to the Defendant's finding that Ms. Rushing suffers solely from depression, a mental illness, in fact the Plaintiff suffers from numerous long-standing physical problems, including, but not limited to, interstitial cystitis, elevated blood pressure, seizures, dizziness/vertigo, coronary artery disease of the left anterior descending artery, and chronic pain.

14.

The Defendant has failed in its fiduciary duty to the Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Rita Rushing prays for judgment from Defendant, Sun Life Financial (U.S.) Services Company, Inc., for all benefits to which she is entitled under the terms of the policy in question, with pre-judgment and post-judgment interest, along with equitable relief, costs, and reasonable attorneys' fees, and such other and further relief as shall be just, or, in the alternative, a remand for a full and fair evaluation by the plan administrator under direction of this Court.

Respectfully submitted, the 21st day of September, 2017.

A handwritten signature in black ink, appearing to read "Dennis L. Horn", is written over a horizontal line.

Dennis L. Horn, Attorney for Plaintiff,
Rita Rushing

Dennis L. Horn (MSB #2645)
Shirley Payne (MSB # 4071)
HORN & PAYNE, PLLC
P. O. Box 2754
Madison, MS 39130-2754
Phone: (601) 853-6090
Fax: (601) 853-2878
hornpayne@gmail.com